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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3696 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHURSHIDAHMED @ DAYAWAN DOSTMOHMAD PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3696 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA with MR ANIL S DAVE for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad

City, Ahmedabad, vide order dated April 3, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a prohibition bootlegger within the meaning of Section 2(b) of the Act as 6 offences under the Prohibition Act are registered against the petitioner which are pending trial and the statements of two anonymous witnesses are recorded in an unregistered offence, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Banna Dutta, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material necessitating the detention of a person in custody. The detaining authority has observed in its order that petitioner would indulge in the similar activity after being released on bail and therefore, it has become necessary to detain him. There is no enough material before the detaining authority to come to the said conclusion and therefore, on this sole ground, the order of detention deserves to be quashed and set aside.

5. Mr S.S.Patel, learned AGP appeared on behalf of the respondent and has opposed the petition by filing affidavit in reply sworn by P.C.Pande, Commissioner of Police, Ahmedabad City, Ahmedabad. He, however, does not dispute the factual aspect that the detaining authority has observed in its order that the petitioner would indulge in similar activities after being released on bail. He, therefore urged to pass an appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the

learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose before the Hon'ble Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA - 1991 (SC) 2261 in which it has been held that there must be enough material necessitating the detention of a person in custody. If there is possibility of his being released on bail and on being so released, he is likely to indulge in prejudicial activities, then there must be compelling reason to pass detention order.

8. A similar view is also expressed by the Hon'ble Supreme Court in the case of AMRITLAL VS. UNION GOVERNMENT - 2000 AIR SCW 4203. In the said case it has been observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

9. Applying the aforesaid principles laid down by the Hon'ble Supreme Court to the facts of the present case, in the instant case also the detaining authority has considered only the aspect of petitioner being released on bail and thereafter to indulge in similar activity, but on what basis the detaining authority has come to the conclusion that the petitioner would continue to indulge in similar activities is not mentioned in the order of detention. Therefore, order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated April 3, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*